



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0774]**

**RIN 1625-AA00**

**Safety Zone, R/V POLARCUS ALIMA, Cook Inlet, Homer, Alaska**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 100-yard radius surrounding the research vessel POLARCUS ALIMA. The safety zone is needed to protect the vessel and members of the public anticipated to exercise their First Amendment right to protest the vessel's activity. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Western Alaska.

**DATES:** This rule is effective from September 9, 2019 through September 11, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0774 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Commander Justin Jacobs, Chief of Prevention, Sector Anchorage, U.S. Coast Guard: telephone 907-428-4149, email [Justin.W.Jacobs@uscg.mil](mailto:Justin.W.Jacobs@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

|        |                                    |
|--------|------------------------------------|
| CFR    | Code of Federal Regulations        |
| COTP   | Captain of the Port Western Alaska |
| DHS    | Department of Homeland Security    |
| FR     | <b>Federal Register</b>            |
| NPRM   | Notice of proposed rulemaking      |
| §      | Section                            |
| U.S.C. | United States Code                 |

## **II. Background Information and Regulatory History**

On September 3, 2019, Hillcorp Alaska, LLC, notified the Coast Guard Sector Anchorage that it would be conducting seismic testing in Cook Inlet, near Kachemak Bay, via the research vessel POLARCUS ALIMNA from September 9-11, 2019. Hillcorp also informed the Coast Guard that it anticipates public protest activity around the vessel.

The Coast Guard is issuing this rule without prior notice and opportunity to comment pursuant to authority under section 4(a), of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Notice and comment procedures are impractical in this situation because there is not enough time for those procedures before the planned vessel movement, and because immediate action is needed to respond to the potential safety hazards associated with the arrival and departure of the research vessel POLARCUS ALIMA. It is impracticable to publish an NPRM because we must establish this safety zone by September 9, 2019, and the Coast Guard was informed of the vessel movement on September 3, 2019. For the same reasons, the Coast Guard is making this rule effective less than thirty days after publication. Normally, the Administrative

Procedure Act (APA) (5 U.S.C. 553(d) requires an agency to publish a rule at least thirty days before the effective date of the rule. However, the agency is not required to delay the effective date if the agency finds good cause for doing so (5 U.S.C. 553(d)(3)). For this rule, the Coast Guard finds good cause to not delaying the effective date of this rule. Delaying the effective date of this rule is impracticable because the rule must be in place in time for the planned vessel movement on September 9, 2019, and the Coast Guard was informed about the vessel movement on September 3, 2019.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Western Alaska (COTP) has determined that potential safety hazards associated with the activity of the research vessel POLARCUS ALIMA in Cook Inlet, near Kachemak Bay, starting September 9, 2019, through September 11, 2019, will be a safety concern for anyone within a 100-yard radius of the vessel while at the pier and underway. This rule is needed to protect the vessel, public, and the marine environment within the safety zone while the vessel transits the area.

### **IV. Discussion of the Rule**

The COTP establishes a safety zone from September 9, 2019 through September 11, 2019. The safety zone will cover all navigable waters within 100 yards of the research vessel POLARCUS ALIMA while in the COTP zone. The duration of the zone is intended to protect the vessel, public, and the marine environment within the safety zone while the vessel is transiting the area. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss the First Amendment right of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and timing of the safety zone. Vessel traffic would be able to safely transit around the safety zone, which would impact a small roving area in Cook Inlet for 3 days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone and location of the research vessel POLARCUS ALIMA, and the rule would allow vessels to seek permission to enter or transit through the safety zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only

3 days that would prohibit entry within 100 yards of the vessel while it is in the COTP zone. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T17-0774 to read as follows:

#### **§ 165.T17-0774 Safety Zone, R/V POLARCUS ALIMA, Cook Inlet, Homer, AK.**

(a) *Regulated area.* The following area is specified as a safety zone: all navigable waters within 100 yards of the research vessel POLARCUS ALIMA while in the Captain of the Port Zone for Western Alaska from September 9, 2019, through September 11, 2019.

(b) *Regulations.* In accordance with the general regulations in this part, the safety zone shall be closed to all persons and vessels unless authorized by the Captain of the Port.

(c) *Authorization.* All persons or vessels who desire to enter the designated safety zone created in this section while it is enforced must obtain permission from the on-scene patrol craft on VHF Ch 9.

(d) *Enforcement period.* This section will be enforced from September 9, 2019, through September 11, 2019.

Dated: September 5, 2019

Sean C. MacKenzie, CAPT  
Captain of the Port Western Alaska  
U.S. Coast Guard

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